IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. A Nos.200 of 2006 & 60 of 2007

Reserved on : October 24, 2007

Decided on : November 2, 2007

Cr.A No.200 of 2006

Jitender Kumar and others **…Appellants.**

Versus

State of H.P. **…Respondent.**

Cr.A No.60 of 2007

State of H.P. **…Appellant.**

Versus

Jitender Kumar and others **…Respondents.**

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

The Hon'ble Mr. Justice Surinder Singh, Judge.

Whether approved for reporting?

For the Appellant(s) : M/s Surender Khanna and Ramesh Thakur, Advocates, in Cr.A No.200 of 2006.

Mr. Som Dutt Vasudeva, Additional Advocate General, with Mr. D.S. Nainta, Deputy Advocate General, in Cr.A No.60 of 2007.

For the Respondent(s): Mr. Som Dutt Vasudeva, Additional Advocate General, with Mr. D.S. Nainta, Deputy Advocate General, in Cr.A No.200 of 2006.

M/s Surender Khanna and Ramesh Thakur, Advocates, in Cr.A No.60 of 2007.

Surjit Singh, Judge

These two appeals are directed against the same judgment, i.e. judgment dated 17th June, 2006, of the Fast Track Court, Mandi and, therefore, they are being disposed of together by this common judgment.

Whether reporters of the local papers may be allowed to see the judgment?

2. Appeal No.200 of 2006 has been filed by appellants Jitender Kumar, his father Ram Dass and mother Krishani alias Parseeno, who shall hereinafter be referred to as accused. The second appeal, i.e. Criminal Appeal No.60 of 2007, has been filed by the State.

3. Accused are aggrieved by the order of their conviction for offences punishable under Sections 304-B and 498-A read with Section 34 IPC and the imposition of the sentence of seven years rigorous imprisonment for the offence under Section 304-B read with Section 34 IPC and for imposition of rigorous imprisonment for two years and fine of Rs.5,000/-, in default of payment of fine imprisonment for a further period of six months awarded to each of the three accused in respect of offence punishable under Section 498-A read with Section 34 IPC. State has filed the appeal for enhancement of punishment of offence under Section 304-B read with Section 34 IPC.

4. Allegations on which the accused were put on trial may be summed up thus. Deceased Saroja Devi, daughter of PW-8 Rangil Singh and sister of PW-9 Ashok Kumar, was married to accused Jitender Kumar on 17th June, 2002. Two-three months after the marriage, accused Jitender Kumar, his father Ram Dass and mother Krishani Devi, both of whom are co-accused with him in this case, started ill-treating and giving beating to the deceased for her having not brought dowry to their expectations. Once in the month of July, 2003, around 11 in the night, she was beaten up so severely that she kept wailing and crying till early next morning and one of the neighbours of the accused, named Nirmala Gupta (PW-5), was so upset that she went to the house of the accused and knocked at the door and when it was not opened she threatened the accused that she would call all the

neighbours in case the door was not opened and when ultimately the door was opened she found that the deceased had been brutally beaten up and on the asking of the deceased she then telephonically informed her parents about her plight. Deceased had reported this incident to the Police vide complaint Ex. PW-13/A on 21st July, 2003. Ultimately, the matter was compromised and a compromise deed Ex. PW-2/A was drawn and the deceased continued to live at the place of the accused once again. On 1st April, 2004, around 10.00 a.m., the deceased was again beaten up very badly by the three accused. She went to the verandah of a neighbour, named PW-1 Shakti Chand Chandel, and requested him to inform her parents about her plight. She also told him that she apprehended her elimination and so her parents be asked to take her back to her parental house immediately. PW-1 Shakti Chand Chandel then made a call to the parents of the deceased. Her brother PW-9 Ashok Kumar accompanied by his *Mama* Budhi Singh reached the house of the accused and carried the deceased with him to her parental house in a village of District Bilaspur. Next morning, she was taken to Bilaspur, which is a District Headquarter. There she got recorded a complaint Ex. PW-6/A from a petition-writer. The complaint was addressed and presented to the Superintendent of Police, who forwarded it to the Incharge of Women Cell. The deceased was then taken to the Zonal Hospital, Bilaspur, where PW-12 Dr. G.D. Jasssal conducted her medico legal examination and recorded the following observations:

1. There was swelling both hands and feets.
2. Swelling in the chest.
3. Big abrasion and Hypothesis of left Lower arm.
4. Swelling on face was present.
5. Swelling on head was present.

6. She was difficult in breathing.

7. Pain neck.

8. Pain all over body.

She was admitted to the hospital where she died on 4th April, 2004 at 3.30 p.m.

5. Postmortem examination was conducted by PW-15 Dr. V.K. Mishra, Professor and Head of Forensic Science, IGMC, Shimla, who noticed the following ante-mortem injuries:

1. 22X17 Cm. large contusion, brownish purple, on front of neck right side and extending up to back and right shoulder, around 3-5 days old.

2. There was a crusted brownish abrasion on right side of neck 12 cm. below the angle of mouth 4 x 3 cm in dimensions around 3-5 days old.

3. 15 x 10 cm purplish contusion on the flexor aspect of right forearm, starting 5 cm below the cubital fossa, around 3-5 days old. On cut section there was diffuse bleed in the subcutaneous muscles and tissues.

4. 21 x 9 cm brownish purple contusion present on left side of forearm up to left wrist 3-5 days old. On cut section diffuse contusion was present up to subcutaneous tissues and muscles as well as of tendons.

5. There was diffuse haematoma below injury No.1 and 2 deep up to muscles and carotid sheath around 29 x 20 cm and 4 cm deep reaching up to back of neck, shoulder and supraclavicular area of right side.

6. Two Iatrogenic (made for treatment) cuts were made for chest tube intubation below both axillae in mid axxilary line (to tap the fluid) by doctors at I.G.M.C.

7. An Iatrogenic cut section for I/V Line was made at right arm.

On opening the cranium and spinal cord, diffused subdural haemorrhage on right side of cerebral hemesphere around 1 to 1.5 cm thick reaching up to base of skull, was noticed. It was opined that the

cause of death was the combined effect of haemorrhagic shock and ante-mortem head injury.

6. The cause of harassment, ill-treatment and the beating of the deceased by the accused was the failure of the parents of the deceased to meet their demand for a sum of Rs.50,000/-, in cash, as a part of the dowry, which the parents of the deceased partly met by payment of Rs.15,000/- sometime in September, 2003.

7. After the death of the deceased, the case, which was initially registered under Sections 498-A, 323, 506 read with Section 34 IPC, was converted into one under Sections 304-B and 302 IPC.

8. On the completion of the investigation, Police filed report, under Section 173 of the Code of Criminal Procedure, alleging that the accused had committed offences, under Sections 498-A, 302/304-B read with Section 34 IPC. Trial Court charged the accused with the offences punishable under Sections 498-A read with Section 34 IPC, 302 read with Section 34 IPC and 304-B read with Section 34 IPC, and on their pleading not guilty proceeded to try them for the aforesaid offences.

9. Prosecution examined 21 witnesses to bring the charge home to the accused. These witnesses included PW-8 Rangil Singh, the father of the deceased, PW-9 Ashok Kumar, a brother of the deceased, PW-1 Shakti Chand, a neighbour of the deceased, PW-5 Nirmala Gupta, another neighbour of the deceased, PW-6 Brij Mohan, who scribed complaint Ex. PW-6/A on the basis of which case was registered against the accused, PW-7 Ramesh Kumar, who had scribed the compromise Ex. PW-2/A pertaining to the earlier incident of July, 2003, PW-12 Dr. G.D. Jassal, who conducted the medico legal examination of the deceased on her being taken to the hospital at

Bilaspur on 2nd April, 2004, PW-15 Dr. V.K. Mishra, who conducted the postmortem examination of the dead body, PW-20 Inspector Ashish Sharma and PW-21 Sub Inspector Anil Kumar, who conducted the investigation of the case.

10. Accused in their statements, under Section 313 of the Code of Criminal Procedure, denied having ever given any beating to the deceased or having ill-treated or subjected her to cruelty. They also denied having demanded dowry or an amount of Rs.50,000/-, in cash, on account of dowry. They pleaded that on 1st April, 2004, PW-9 Ashok Kumar, a brother of the deceased, accompanied by his *Mama* Budhi Singh came to their house and took away the deceased with them on the plea that she, having delivered a child only a month back, be allowed to visit her parental place alongwith her child and that when the deceased went with them she was hale and hearty and there was no injury or any mark of violence on her person.

11. Trial Court has held that the evidence on record does not prove the charge of murder, but it does prove that the three accused treated the deceased with cruelty, within the meaning of Section 498-A IPC, and the deceased having died otherwise than under normal circumstances within seven years of her marriage and it having been shown that soon before her death she had been subjected to cruelty by the accused, in connection with demand for dowry, they were guilty of the offence of dowry death also, punishable under Section 304-B IPC, besides the offence under Section 498-A IPC.

12. It has been submitted on behalf of the accused that the evidence on record does not justify the conclusions drawn by the trial Court that (a) the deceased was subjected to cruelty at all, and (b) the deceased was subjected to cruelty soon before her death, in

connection with the demand for dowry and that on the contrary the evidence on record proves that the deceased herself used to mock and jeer at the accused, particularly her father-in-law Ram Dass and mother-in-law Krishani Devi, and because of that there were differences, and as per the terms of compromise Ex. PW-2/A, the deceased specifically undertook not to mock at her parents-in-law and to obey them and also to do the household chores. The learned counsel took us through various documents and the testimony of the relevant witnesses to substantiate his aforesaid submission.

13. Prosecution, with a view to proving its allegation that the deceased was once beaten up in the month of July, 2003 in connection with the demand for an amount of Rs.50,000/-, in cash, on account of dowry, relied upon a complaint Ex. PW-13/A allegedly made by the deceased to the SHO of Police Station, Sarkaghat, on 21st July, 2003, and a compromise arrived at between the parties after the filing of the aforesaid complaint, which is Ex. PW-2/A and has been proved by PW-7 Ramesh Kumar, besides the testimony of PW-5 Nirmala Gupta, PW-8 Rangil Singh, the father of the deceased, and PW-9 Ashok Kumar, the brother of the deceased.

14. The prosecution has not proved as to who had written the complaint Ex. PW-13/A nor has anybody proved that the complaint bears the signatures of deceased Saroja Devi. Prosecution examined PW-14 Lady Constable Purnu Devi to whom this complaint was assigned for inquiry and who reported, vide endorsement Ex. PW-14/A, that there had been a compromise between the parties, but she did not say that the complaint was signed by the deceased. She was also not shown compromise deed Ex. PW-2/A when in the witness box to get it

testified from her that compromise Ex. PW-2/A was in relation to complaint Ex. PW-13/A.

15. From the prosecution's own evidence, it appears that Ex. PW-2/A is unrelated to Ex. PW-13/A. PW-9 Rangil Singh, the father of the deceased, testified that on getting a telephonic message on 23rd July, 2003 that the deceased had been beaten up, he accompanied by Rajesh and Roshani Devi went to the house of the accused in Sarkaghat and on seeing the condition of the deceased, as a result of the beating by the accused, he reported the matter to the Police and then compromise Ex. PW-2/A was arrived at. Rajesh and Roshani Devi, named by PW-9 as companions to the house of the accused, have not been examined. Instead one Satish Kumar (PW-2) has been examined, who has stated that he too accompanied Rangil Singh alongwith Rajesh and Roshani Devi to the house of the accused and they enquired about the cause of ill-treatment given to Saroja Devi and then compromise deed Ex. PW-2/A was prepared and signed by the parties and he too signed it, as a witness. He does not talk of any complaint having been lodged with the Police either by the deceased or by her father PW-8 Rangil Singh.

16. A perusal of Ex. PW-2/A also shows that when the compromise was arrived at there was no allegation of demand of dowry, leave alone an amount of Rs.50,000/-, in cash, or for that matter any amount of money. In fact, the cause of alleged beating of the deceased, as per contents of Ex. PW-2/A, was her jeering at and taunting the accused and the accused finding faults with the quality of the household chores performed by the deceased.

17. Even if it be assumed for the sake of argument that Ex. PW-2/A and Ex. PW-13/A are the part of the same transaction, in the

sense that Ex. PW-2/A was arrived at to get complaint Ex. PW-13/A filed, there is absolutely no evidence on record that the accused were made aware of the contents of Ex. PW-13/A in which there is an allegation of harassment and physical torture of the deceased, on account of demand of dowry in the form of a cash of Rs.50,000/-. Therefore, it cannot be said that the accused admitted, even by implication, on account of their having signed Ex. PW-2/A, that the allegation made in the complaint Ex. PW-13/A regarding demand of dowry was true. PW-14 Purnu Devi, Lady Constable, who inquired into the matter, has nowhere stated that the allegation of demand of dowry was found to be correct.

18. Allegation of demand of Rs.50,000/-, on account of the dowry is also rendered highly doubtful by the contradiction appearing in the testimony of PW-8 Rangil Singh, the father of the deceased, and the contents of complaint Ex. PW-6/A, which the deceased allegedly got recorded from PW-6 Brij Mohan, on 2nd April, 2004, at Bilaspur, where she was taken after being brought from her in-laws' house on 1st April, 2004. As per the contents of this complaint, the deceased was beaten up severally by the accused in the month of July, 2003 and then her father gave Rs.15,000/- to the accused, but even thereafter the accused had been pressurizing her to bring another amount of Rs.50,000/-. The complaint does not record that the demand for Rs.50,000/- had been made by the accused and it was thereafter that her father paid an amount of Rs.15,000/- to the accused. On the contrary, as already noticed, it reads that the demand for Rs.50,000/- had been made after a sum of Rs.15,000/- had been paid by the father of the deceased when she was beaten up in July, 2003. The father of the deceased PW-8 Rangil Singh has, however, stated that the

deceased had demanded Rs.50,000/-, in cash, and pursuant to such demand he had paid Rs.15,000/- to accused Jitender Kumar on 15th or 16th September, 2003.

19. Statement of PW-8 Rangil Singh about payment of Rs.15,000/- by him to accused Jitender Kumar is not corroborated by any other evidence, except for the statement of his son PW-9 Ashok Kumar, which is quite vague, because it does not indicate when the demand was made and when the amount of Rs.15,000/- had been paid. Not only this, the witness does not say as to what amount of money was actually demanded. The allegation is further rendered doubtful by another piece of evidence relied upon by the prosecution itself. This piece of evidence consists of diary Ex. P-1 allegedly written by the deceased. In this diary the amount allegedly demanded by the accused, on account of dowry, was Rs.1,00,000/-.

20. Prosecution examined two of the neighbours of the accused, namely PW-5 Nirmala Gupta, who testified about the beating of the deceased by the accused in July, 2003, and PW-1 Shakti Chand, who stated that the deceased came to the verandah of his house and requested him to inform her parents telephonically about the beating given to her by the accused on 1st April, 2004. Neither of the two witnesses stated that the accused demanded dowry or that she was given beating by the accused in connection with their demand for dowry or the deceased complained that she had been assaulted on account of demand for dowry.

21. In view of the above discussed position, it cannot be said that the deceased was subjected to alleged cruelty in connection with the demand for dowry by the accused and, hence, the conviction of the

accused for offence under Section 304-B read with Section 34 IPC cannot be upheld.

22. However, the evidence on record positively proves that the deceased was subjected to cruelty by the accused. It is admitted by the accused that compromise Ex. PW-2/A was arrived at between the parties. An overall reading of the compromise shows that the accused had given an undertaking that they will not give any beating to the deceased in future. This undertaking was given by them after the deceased gave an undertaking that she would not laugh at her in-laws or make mockery of them and would do the household chores sincerely. The aforesaid undertaking given by the accused suggests that they had been giving beating to the deceased. Also, there is evidence in the form of the testimony of the neighbours of the accused that they used to give beating to the deceased and that even on 1st April, 2004 she had been subjected to such a physical torture that she went walking to the house of PW-1 Shakti Chand with great difficulty. PW-1 Shakti Chand stated that on 1st April, 2004, around 10.30 a.m., deceased came to the verandah of his house and told that she had been beaten up by her husband and father-in-law and that her parents be informed of her plight and be asked to take her back to her parental house. The witness further stated that Saroja Devi was unable to stand properly. He also stated that he then gave a telephonic call to the parents of the deceased on the number disclosed to him by the deceased.

23. PW-5 Nirmala Gupta, another neighbour of the accused, has stated that once in the month of July she heard the cries of the deceased around 11 in the night and next morning at 5 a.m. she again heard her cries and when she went to the house of the accused and

knocked at their door they refused to open the door and it was only when she threatened that she would be calling all the neighbours that the door was opened and then she went inside and noticed that clothes of the deceased were wet and she had marks of injuries on her person and she arranged to provide first aid to her and also gave her some medicines. She further stated that the deceased also told her that she had been beaten up.

24. In view of the evidence of the abovestated two neighbours of the deceased and the accused, no fault can be found with the conviction and sentence of the accused for an offence under Section 498-A read with Section 34 IPC, as ordered by the trial Court.

25. As a result of the abovestated position, appeal filed by the accused, i.e., Criminal Appeal No.200 of 2006, is partly accepted. Conviction and sentence of the accused for the offence under Section 304-B read with Section 34 IPC are set aside. Their conviction and sentence for the offence under Section 498-A read with Section 34 IPC are, however, upheld.

26. Appeal filed by the State, i.e., Criminal Appeal No.60 of 2007, for enhancement of punishment for offence under Section 304-B read with Section 34 IPC, becomes infructuous, on account of the acquittal of the accused so far as charge under Section 304-B read with Section 34 IPC is concerned.

27. Both the appeals stand disposed of accordingly.

(Surjit Singh), J

November 2,2007(sd) **(Surinder Singh), J**